

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 27, 2005

AMENDED IN ASSEMBLY MAY 3, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 478**

**Introduced by Assembly Member Lieber**

(Principal coauthor: Senator Alquist)

**(Coauthors: Assembly Members Bass, Goldberg, Leno, and Liu)**

(Coauthor: Senator Romero)

February 16, 2005

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An act to amend Sections 3419, 3423, and 6030 of, and to add Sections 3424 and 5007.7 to, the Penal Code, and to amend Sections 222 and 1774 of the Welfare and Institutions Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 478, as amended, Lieber. Female inmates and wards.

(1) Existing law provides that an inmate who gives birth after her receipt by the Department of Corrections *and Rehabilitation* may be declared eligible to participate in a community treatment program that provides for the release of the mother and child to a public or private facility in the community suitable to their needs.

This bill would require any community treatment program in which such an inmate participates to include prenatal care, access to prenatal vitamins, childbirth education, and infant care. This bill would also require the department to establish minimum standards for pregnant inmates who are not eligible for the program including necessary

nutrition and vitamins, information and education, and regular dental cleanings.

(2) Existing law provides that any inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for childbirth.

This bill would provide that pregnant inmates taken to a hospital outside the prison shall be transported in the least restrictive way possible. This bill would also provide that the inmate shall not be shackled by the wrists, ankles, or both during labor, including during transport to the hospital, during delivery, and while in recovery after giving birth, except as specified.

(3) Existing law requires the department to establish minimum standards for local detention facilities, as specified.

This bill would provide that those standards shall require that inmates who are received by the facility while they are pregnant are provided, at a minimum, necessary nutrition and vitamins, information and education, and regular dental cleanings. This bill would also require that these standards provide that at no time shall a woman who is in labor be shackled by the wrists, ankles, or both, including during transport to the hospital, during delivery, and while in recovery after giving birth, except as specified.

(4) Existing law entitles any female in the custody of a local juvenile facility or the ~~Youth Authority~~ *Department of Corrections and Rehabilitation, Division of Juvenile Facilities*, the right to summon and receive the services of any physician and surgeon of her choice to determine if she is pregnant, and to a determination of the medical services needed with regard to the pregnancy.

This bill would provide that a ward who gives birth while under the jurisdiction of ~~a local juvenile facility~~, the Department of Corrections and ~~Rehabilitating~~ *Rehabilitation*, Division of Juvenile Facilities, or a community treatment program, has the right to prenatal care, prenatal vitamins, *and* childbirth education, ~~and infant care~~. The bill would apply the requirements outlined in (2) above to pregnant wards *under the jurisdiction of local or state correctional facilities*.

(5) Because this bill would require local officials to provide additional services, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3419 of the Penal Code is amended to  
2 read:

3 3419. (a) In the case of any inmate who gives birth after her  
4 receipt by the Department of Corrections, the department shall,  
5 subject to reasonable rules and regulations promulgated pursuant  
6 to Section 3414, provide notice of, and a written application for,  
7 the program described in this chapter, and upon her request,  
8 declare the inmate eligible to participate in a program pursuant to  
9 this chapter if all of the requirements of Section 3417 are met.

10 (b) The notice provided by the department shall contain, but  
11 need not be limited to, guidelines for qualification for, and the  
12 timeframe for application to, the program and the process for  
13 appealing a denial of admittance.

14 (c) Any community treatment program, in which an inmate  
15 who gives birth after her receipt by the Department of  
16 Corrections participates, shall include, but is not limited to, the  
17 following:

- 18 (1) Prenatal care.
- 19 (2) Access to prenatal vitamins.
- 20 (3) Childbirth education.
- 21 (4) Infant care.

22 SEC. 2. Section 3423 of the Penal Code is amended to read:

23 3423. Any woman inmate who would give birth to a child  
24 during her term of imprisonment may be temporarily taken to a  
25 hospital outside the prison for the purposes of childbirth, and the  
26 charge for hospital and medical care shall be charged against the  
27 funds allocated to the institution. The inmate shall not be  
28 shackled by the wrists, ankles, or both during labor, including  
29 during transport to a hospital, during delivery, and while in

1 recovery after giving birth, except as provided in Section 5007.7.  
2 The board shall provide for the care of any children so born and  
3 shall pay for their care until suitably placed, including, but not  
4 limited to, placement in a community treatment program.

5 SEC. 3. Section 3424 is added to the Penal Code, to read:

6 3424. A woman who is pregnant during her incarceration and  
7 who is not eligible for the program described in this chapter shall  
8 have access to complete prenatal health care. The department  
9 shall establish minimum standards for pregnant inmates in its  
10 custody who are not placed in a community treatment program  
11 including all of the following:

12 (a) A balanced, nutritious diet approved by a doctor.

13 (b) Prenatal information and health care, including, but not  
14 limited to, access to necessary vitamins as recommended by a  
15 doctor.

16 (c) Information pertaining to childbirth education and infant  
17 care.

18 (d) Regular dental cleanings.

19 SEC. 4. Section 5007.7 is added to the Penal Code, to read:

20 5007.7. Pregnant inmates temporarily taken to a hospital  
21 outside the prison for the purposes of childbirth shall be  
22 transported in the least restrictive way possible, consistent with  
23 the legitimate security needs of each inmate. Upon arrival at the  
24 hospital, once the inmate has been declared by the attending  
25 physician to be in active labor, the inmate shall not be shackled  
26 by the wrists, ankles, or both, unless deemed necessary for the  
27 safety and security of the inmate, the staff, and the public.

28 ~~SEC. 5. Section 6030 of the Penal Code is amended to read:~~

29 ~~6030. (a) The Board of Corrections shall establish minimum~~  
30 ~~standards for local detention facilities by July 1, 1972. The Board~~  
31 ~~of Corrections shall review such standards biennially and make~~  
32 ~~any appropriate revisions.~~

33 ~~(b) The standards shall include, but not be limited to, the~~  
34 ~~following: health and sanitary conditions, fire and life safety,~~  
35 ~~security, rehabilitation programs, recreation, treatment of persons~~  
36 ~~confined in local detention facilities, and personnel training.~~

37 ~~(c) Such standards shall require that at least one person on~~  
38 ~~duty at the facility is knowledgeable in the area of fire and life~~  
39 ~~safety procedures.~~

1 ~~(d) The standards shall also include requirements relating to~~  
2 ~~the acquisition, storage, labeling, packaging, and dispensing of~~  
3 ~~drugs.~~

4 ~~(e) The standards shall require that inmates who are received~~  
5 ~~by the facility while they are pregnant are provided all of the~~  
6 ~~following:~~

7 ~~(1) A balanced, nutritious diet approved by a doctor.~~

8 ~~(2) Prenatal information and health care, including, but not~~  
9 ~~limited to, access to necessary vitamins as recommended by a~~  
10 ~~doctor.~~

11 ~~(3) Information pertaining to childbirth education and infant~~  
12 ~~care.~~

13 ~~(4) Regular dental cleanings.~~

14 ~~(f) The standards shall provide that at no time shall a woman~~  
15 ~~who is in labor be shackled by the wrists, ankles, or both~~  
16 ~~including during transport to a hospital, during delivery, and~~  
17 ~~while in recovery after giving birth, except as provided in Section~~  
18 ~~5007.7.~~

19 ~~(g) In establishing minimum standards, the Board of~~  
20 ~~Corrections shall seek the advice of the following:~~

21 ~~(1) For health and sanitary conditions:~~

22 ~~The State Department of Health Services, physicians,~~  
23 ~~psychiatrists, local public health officials, and other interested~~  
24 ~~persons.~~

25 ~~(2) For fire and life safety:~~

26 ~~The State Fire Marshal, local fire officials, and other interested~~  
27 ~~persons.~~

28 ~~(3) For security, rehabilitation programs, recreation, and~~  
29 ~~treatment of persons confined in local detention facilities:~~

30 ~~The Department of Corrections, the Department of the Youth~~  
31 ~~Authority, local juvenile justice commissions, local correctional~~  
32 ~~officials, experts in criminology and penology, and other~~  
33 ~~interested persons.~~

34 ~~(4) For personnel training:~~

35 ~~The Commission on Peace Officer Standards and Training,~~  
36 ~~psychiatrists, experts in criminology and penology, the~~  
37 ~~Department of Corrections, the Department of the Youth~~  
38 ~~Authority, local correctional officials, and other interested~~  
39 ~~persons.~~

40 *SEC. 5. Section 6030 of the Penal Code is amended to read:*

6030. (a) The Corrections Standards Authority shall establish minimum standards for state and local correctional facilities. The standards for state correctional facilities shall be established by January 1, 2007. The authority shall review those standards biennially and make any appropriate revisions.

(b) The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and personnel training.

(c) The standards shall require that at least one person on duty at the facility is knowledgeable in the area of fire and life safety procedures.

(d) The standards shall also include requirements relating to the acquisition, storage, labeling, packaging, and dispensing of drugs.

*(e) The standards shall require that inmates who are received by the facility while they are pregnant are provided all of the following:*

*(1) A balanced, nutritious diet approved by a doctor.*

*(2) Prenatal information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.*

*(3) Information pertaining to childbirth education and infant care.*

*(4) Regular dental cleanings.*

*(f) The standards shall provide that at no time shall a woman who is in labor be shackled by the wrists, ankles, or both including during transport to a hospital, during delivery, and while in recovery after giving birth, except as provided in Section 5007.7.*

(g) In establishing minimum standards, the authority shall seek the advice of the following:

(1) For health and sanitary conditions:

The State Department of Health Services, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

The State Fire Marshal, local fire officials, and other interested persons.

(3) For security, rehabilitation programs, recreation, and treatment of persons confined in correctional facilities:

The Department of Corrections and Rehabilitation, state and local juvenile justice commissions, state and local correctional officials, experts in criminology and penology, and other interested persons.

(4) For personnel training:

The Commission on Peace Officer Standards and Training, psychiatrists, experts in criminology and penology, the Department of Corrections and Rehabilitation, state and local correctional officials, and other interested persons.

SEC. 6. Section 222 of the Welfare and Institutions Code is amended to read:

222. (a) Any female in the custody of a local juvenile facility shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. If she is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of ~~such~~ *those* services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by ~~such~~ *the* female.

~~(b) A ward who gives birth while under the jurisdiction of a local juvenile facility or community treatment program has the right to the following services:~~

~~(1) Prenatal care.~~

~~(2) Access to prenatal vitamins.~~

~~(3) Childbirth education.~~

~~(4) Infant care.~~

~~(e)~~

(b) A ward shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, subject to the security needs described in this section. Pregnant wards temporarily taken to a hospital outside the facility for the purposes of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each ward. Upon arrival at the hospital, once the ward has been declared by the attending physician to be in active labor, the ward shall not be shackled by the wrists, ankles, or both, unless

1 deemed necessary for the safety and security of the ward, the  
2 staff, and the public.

3 ~~(d) For the purpose~~

4 *(c) For purposes* of this section, “local juvenile facility”  
5 means any city, county, or regional facility used for the  
6 confinement of juveniles for more than 24 hours.

7 ~~(e)~~

8 *(d)* The rights provided to females by this section shall be  
9 posted in at least one conspicuous place to which all female  
10 wards have access.

11 SEC. 7. Section 1774 of the Welfare and Institutions Code is  
12 amended to read:

13 1774. (a) Any female who has been committed to the  
14 authority shall have the right to summon and receive the services  
15 of any physician and surgeon of her choice in order to determine  
16 whether she is pregnant. The director may adopt reasonable rules  
17 and regulations with regard to the conduct of examinations to  
18 effectuate that determination.

19 (b) If she is found to be pregnant, ~~a female~~ *she* is entitled to a  
20 determination of the extent of the medical services needed by her  
21 and to the receipt of those services from the physician and  
22 surgeon of her choice. Any expenses occasioned by the services  
23 of a physician and surgeon whose services are not provided by  
24 the facility shall be borne by the female.

25 (c) A ward who gives birth while under the jurisdiction of the  
26 Department of Corrections and Rehabilitation, Division of  
27 Juvenile Facilities, or a community treatment program has the  
28 right to the following services:

29 (1) Prenatal care.

30 (2) Access to prenatal vitamins.

31 (3) Childbirth education.

32 ~~(4) Infant care.~~

33 (d) A ward shall not be shackled by the wrists, ankles, or both  
34 during labor, including during transport to a hospital, during  
35 delivery, and while in recovery after giving birth, subject to the  
36 security needs described in this section. Pregnant wards  
37 temporarily taken to a hospital outside the facility for the  
38 purposes of childbirth shall be transported in the least restrictive  
39 way possible, consistent with the legitimate security needs of  
40 each ward. Upon arrival at the hospital, once the ward has been



1 declared by the attending physician to be in active labor, the  
2 ward shall not be shackled by the wrists, ankles, or both, unless  
3 deemed necessary for the safety and security of the ward, the  
4 staff, and the public.

5 (e) Any physician providing services pursuant to this section  
6 shall possess a current, valid, and unrevoked certificate to engage  
7 in the practice of medicine issued pursuant to Chapter 5  
8 (commencing with Section 2000) of Division 2 of the Business  
9 and Professions Code.

10 (f) The rights provided to females by this section shall be  
11 posted in at least one conspicuous place to which all female  
12 wards have access.

13 SEC. 8. If the Commission on State Mandates determines that  
14 this act contains costs mandated by the state, reimbursement to  
15 local agencies and school districts for those costs shall be made  
16 pursuant to Part 7 (commencing with Section 17500) of Division  
17 4 of Title 2 of the Government Code.